

Exhibit 6

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13 FEDERAL TRADE COMMISSION

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF ARIZONA

16 Federal Trade Commission,
17 Plaintiff,

v.

18 Grand Canyon Education, Inc., *et al.*,
19 Defendants.

No. CV-23-02711-PHX-DWL

**FTC'S SUPPLEMENTAL RESPONSE
TO DEFENDANT MUELLER'S FIRST
SET OF INTERROGATORIES**

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21
22 In accordance with Federal Rules of Civil Procedure 26 and 33, Plaintiff Federal
23 Trade Commission ("FTC") hereby provides supplemental responses to Defendant
24 Mueller's First Set of Interrogatories to Plaintiff Federal Trade Commission. The FTC's
25 responses to the Interrogatories represent the FTC's present knowledge based on
26

1 its investigation, information, and preparation to date. The FTC reserves the right to
2 supplement, revise, modify, or otherwise change or amend its responses to the
3 Interrogatories.

4 **SUPPLEMENTAL GENERAL OBJECTIONS**

5 **A. Work Product Protections**

6 Prior to filing suit against Defendants, the FTC conducted a non-public law
7 enforcement investigation into whether entities marketing the services of Grand Canyon
8 University (“GCU”) or overseeing the marketing of such services have, in violation of
9 the FTC Act, 15 U.S.C. § 45, engaged in deceptive, unfair, or otherwise unlawful acts or
10 practices in connection with the advertising, marketing, offering for sale, or sale of,
11 educational services, or have violated the Telemarketing Sales Rule, 16 C.F.R. Part 310,
12 by making telemarketing calls to persons on the National Do-Not-Call Registry or to
13 persons who have stated that they do not wish to receive such telemarketing calls.
14 Because GCU and Grand Canyon Education, Inc. (“GCE”) had litigated or were
15 litigating several suits challenging their marketing practices, FTC staff anticipated
16 litigation when it conducted this investigation. Public dockets showed that, prior the
17 initiation of the FTC’s investigation, several suits had been filed concerning GCU’s or
18 GCE’s marketing practices, including suits alleging that its telemarketing practices
19 improperly incentivize recruiters to telemarket or violated the Telephone Consumer
20 Protection Act; or that GCU misrepresented its educational programs. GCE’s transfer of
21 assets in 2018 prompted shareholder actions and a GCU suit against the Department of
22 Education regarding its nonprofit status that indicated that the FTC must anticipate
23 litigation regarding whether GCU is subject to the authority of the FTC or
24 representations that GCU is a nonprofit. The work product of staff conducting this
25 investigation was generated in anticipation of potential litigation, and the FTC is
26

1 withholding information, including notes, drafts, and internal communications, based on
2 the work product doctrine.

3 In addition, in the course of its investigation and during this litigation, FTC staff
4 has had conversations with former employees of Defendants as well as staff of other law
5 enforcement agencies. The recollections and mental impressions of FTC staff regarding
6 these communications are protected by the attorney work product doctrine. Records
7 created by FTC staff regarding such conversations are necessarily protected work
8 product. First, such records may directly or indirectly reveal the attorney's mental
9 processes, opinion work product. Second, FTC staff are not scriveners taking dictation,
10 and the reliability of notes or recollections of an individual's statements is a function of
11 many factors, including the conditions of the interview, the contemporaneousness of the
12 writing, and the editorial discretion of the attorney. Third, discovery and use of such
13 material creates a danger of converting the attorney from advocate to witness. Finally,
14 the information contained in such memoranda generally is of limited utility, especially
15 where the source is available to the opposing party. The FTC is withholding the work
16 product of staff from these communications, including written summaries of
17 conversations with consumers, former employees and staff of other law enforcement
18 agencies.

19 **B. Deliberative Process and Attorney-Client Privileges**

20 The FTC's investigation involved multiple instances in which staff recommended
21 action by the FTC Commissioners. The staff recommended, and the FTC
22 Commissioners approved, the use of compulsory process for the production of
23 documents, answers to written questions, and oral testimony. 16 C.F.R. § 2.7. FTC staff
24 also recommended that the FTC Commissioners authorize staff to file the complaint
25 pursuant to 15 U.S.C. § 53, 56(a), and 57b, and 15 U.S.C. § 6105. FTC staff also
26 recommended that the FTC Commissioners authorize staff to file an amended complaint

1 with additional allegations regarding GCU. Materials regarding staff recommendations,
2 communications about the recommendations, and the deliberative process that led to
3 these FTC actions is protected by the deliberative process privilege, and the FTC is
4 withholding materials covered by these requests to protect that deliberative process. The
5 documents over which the FTC asserts the deliberative process privilege were generated
6 in the process of investigating possible law violations, recommendations for the use of
7 investigative tools and enforcement options; and deliberations regarding litigation
8 options and positions. The documents were used by FTC staff attorneys, managers and
9 other governmental agencies in formulating their proposals and recommendations.
10 Disclosure of these materials and communications would inhibit frank discussions,
11 comments, and legal advice by FTC and other government agency personnel. Some of
12 the internal communications that the FTC is withholding are also protected attorney-
13 client communications. Staff communications regarding the approval of compulsory
14 process and initiation of an enforcement actions include communications for the purpose
15 of requesting or providing legal advice regarding the matters that were the subject of
16 recommendations.

17 **C. Law Enforcement Privilege and Relevance**

18 FTC staff communicated with staff of other law enforcement agencies regarding
19 the FTC's work product, the work of the correspondent agencies, and information
20 relevant to investigation of GCU and GCE. The FTC has withheld some of these
21 communications as protected by the law enforcement privilege and work product
22 doctrine. Law enforcement agencies must be able to communicate with each other
23 openly and honestly with confidence that inter-agency communications will be kept
24 confidential—particularly when conducting investigations that, like the FTC's
25 investigation of GCE and GCU, are not public. Such communications allow agencies to
26 avoid duplicative work, share information about targets, and more efficiently and

1 effectively enforce laws. Disclosure of information exchanged in the course of
2 confidential inter-agency consultation in law enforcement investigations would reveal
3 techniques and procedures, and hamper the agencies' ability to work cooperatively and
4 bring appropriate actions. The disclosure of the information for which this privilege is
5 claimed would disseminate information about law enforcement tactics, deliberative
6 processes, and judgments regarding evidence and testimony, including information
7 regarding the techniques and procedures through which law enforcement agencies share
8 information. Disclosure of confidential communications regarding law enforcement
9 investigations would harm the FTC's law enforcement efforts and those of agencies with
10 which the FTC communicates; it would make agencies less likely to communicate
11 openly and honestly with the FTC in the future for fear that their communications, and
12 their decisions to pursue (or not pursue) certain matters would not be kept confidential.
13 Disclosures that signal to other law enforcement agencies that their communications
14 with the FTC may not remain confidential will jeopardize the FTC's law enforcement
15 efforts.

16 The FTC also notes that documents reflecting communications with staff of other
17 law enforcement agencies are not relevant to whether Defendants violated Section 5 of
18 the FTC Act or the Telemarketing Sales Rule. Nor are they relevant to any asserted
19 affirmative defenses. In particular, actions by other agencies or entities do not give rise
20 to equitable defenses against FTC enforcement actions to protect the public.

21 **D. Law Enforcement and Confidential Informants Privileges**

22 The FTC has been contacted by employees or former employees who reported
23 information regarding marketing practices of the Defendants. Some employees and
24 former employees have expressed fear that reprisals might occur if their communication
25 with law enforcement authorities was disclosed. Informants who communicated with
26 such authorities might be subjected to intimidation or harassment. GCU has

disseminated statements denouncing investigations by the FTC and other federal agencies in terms suggest that those who identify with GCU or similar institutions should view persons who communicate with law enforcement with hostility because they are disloyal, dishonest, or biased. Disclosure of information from informants would undermine the FTC's law enforcement function because persons with knowledge of law violations may fail to share information with the FTC because they fear reprisal or retaliation. Even if the information from such informants is not admissible evidence or is not used by the FTC to support a law enforcement action, reports from informants may help the FTC to identify and gather evidence that aids in identifying legal violations and the persons responsible for such violations. Disclosure of information from such informants would jeopardize the FTC's efforts in this and other law enforcement investigations.

SUPPLEMENTAL INTERROGATORY RESPONSES

INTERROGATORY No. 1: Identify Your communications with any student consumer group and/or student advocacy group about or concerning or relating to any Defendant, individually or collectively.

SUPPLEMENTAL RESPONSE:

The FTC objects that the Interrogatory's request for additional details demanded by instructions or definitions is unduly burdensome as information on counsel for these plaintiffs is available to Defendants. The FTC objects that information regarding the content of the communications, recollections of the communications, and the mental impressions of the attendees is protected by the work product doctrine.

Subject to and without waiving the above objections, the supplemental general objections, and the objections asserted in its original response, the FTC states that on September 24, 2024, FTC Counsel communicated with counsel for the plaintiffs in *Smith v. Grand Canyon Education, Inc.*, Case No. 2:24-01410 (D. Ariz.), a suit that the FTC

1 has identified as a related case. Information on the date and time at which these
2 communications occurred, and the attendees is available in documents identified in the
3 FTC's production to Defendants, *see* FTCvGCE-FTC016425 – FTCvGCE-FTC016429.
4 Details regarding the individuals identified in those documents are available in the public
5 docket for *Smith v. Grand Canyon Education, Inc.* Apart from the September 24, 2024
6 communications described above, FTC Counsel has not communicated with a student
7 consumer group and/or student advocacy group about this Litigation, or the conduct
8 described in the First Amended Complaint.

9
10 **INTERROGATORY No. 3:** Identify each meeting held under 16 C.F.R. § 4.15 (or by
11 written circulation) at or during which any Defendant was discussed, mentioned or
12 considered, including the date of any such meetings, the people in attendance, a
13 description and of the matter(s) discussed, mentioned or considered, and a summary of
14 the FTC's decision or resolution with respect to the matter.

15 **SUPPLEMENTAL RESPONSE:**

16 The FTC objects that the Interrogatory's request for details related to the
17 deliberations and recommendations that preceded the FTC Commissioner votes are
18 protected by the work-product doctrine, deliberative process privilege, attorney client
19 privilege, law enforcement privilege, and the informant's privilege. The FTC further
20 objects that this Interrogatory is overbroad if not construed to be limited to FTC
21 Commissioner meetings to vote on matters relating to the Litigation, and answers only
22 with respect to meetings or written circulation pertaining to such matters.

23 Without waiving the above objections, the supplemental general objections, and
24 the objections asserted in its original response, the FTC states that the FTC has held no
25 meeting under 16 C.F.R. § 4.15 regarding this Litigation. The FTC Commissioners have
26 approved motions to authorize the Complaint and Amended Complaint by written

1 authorization. Details of the FTC Commissioners' votes on those motions are recorded
2 in FTCvGCE-FTC012682 – FTCvGCE-FTC012685.

3
4 **INTERROGATORY No. 7:** Identify all facts and documents that relate to, reference,
5 and/or support your allegations in paragraph 14 of the First Amended Complaint that
6 “Gazelle/GCU was organized by GCE and Defendant Mueller [for Gazelle
7 University/GCU’s own profit, and] to advance GCE’s for-profit business and to advance
8 Defendant Mueller’s interests.”

9 **SUPPLEMENTAL RESPONSE:**

10 Without waiving the supplemental general objections and the objections asserted
11 in its original response, the FTC states that principal and material facts supporting the
12 statement that Gazelle/GCU was organized by GCE and Defendant Mueller for Gazelle
13 University/GCU’s own profit, and to advance GCE’s for-profit business and to advance
14 Defendant Mueller’s interests are described in the Department of Education Review of
15 the Change in Ownership and Conversion to Nonprofit Status of Grand Canyon
16 University, OPEID 00107400 (Nov. 6, 2019); the Department of Education
17 Reconsideration Review of the Change in Ownership to Nonprofit Status of Grand
18 Canyon University, OPE ID: 00107400 (Jan. 12, 2021); the Order on Motions for
19 Summary Judgment in Grand Canyon University v. Cardona, No. CV-21-00177-PHX-
20 SRB, ECR 96 (D. Ariz., Dec. 1, 2022); Grand Canyon Education, Inc., SEC Form 8K,
21 Oct. 29, 2014, Item 8.01 and Exhibit 99.2; Defendant Mueller’s employment agreements
22 with Grand Canyon Education, Inc.; and Plaintiff’s Opposition to Defendants’ Motion to
23 Stay Discovery on Nonprofit Claims, ECF 141.

24
25 **INTERROGATORY No. 9:** Identify all facts and documents that relate to, reference,
26 and/or support your allegations in paragraph 55 of the First Amended Complaint that

1 “Defendants train telemarketers for GCU doctoral degree marketing campaigns with
2 materials that describe the GCU doctoral programs as requiring twenty courses, which
3 include only three dissertation courses.”

4 **SUPPLEMENTAL RESPONSE:**

5 Without waiving the supplemental general objections and the objections asserted
6 in its original response, the FTC states that additional documents supporting the
7 allegation include presentations identified with the production numbers below:

8 GCE-FTC-CID-003-00005996 — GCE-FTC-CID-003-00006070

9 GCE-FTC-CID-003-00006071 — GCE-FTC-CID-003-00006145

10 GCE-FTC-CID-003-00006146 — GCE-FTC-CID-003-00006220

11 GCE-FTC-CID-003-00006221 — GCE-FTC-CID-003-00006295

12 GCE-FTC-CID-017-00011938 — GCE-FTC-CID-017-00012026

13 GCE-FTC-LIT-002-0002818 — GCE-FTC-LIT-002-0002892

14 GCE-FTC-LIT-002-0002893 — GCE-FTC-LIT-002-0002967

15 GCE-FTC-LIT-002-0002968 — GCE-FTC-LIT-002-0003042

16 GCE-FTC-LIT-002-0003043 — GCE-FTC-LIT-002-0003117

17 GCE-FTC-LIT-002-0017377 — GCE-FTC-LIT-002-0017465

18 GCE-FTC-LIT-002-0025683 — GCE-FTC-LIT-002-0025750

19 GCE-FTC-LIT-002-0025751 — GCE-FTC-LIT-002-0025825

20 GCE-FTC-LIT-002-0025826 — GCE-FTC-LIT-002-0025914

21 GCE-FTC-LIT-002-0025915 — GCE-FTC-LIT-002-0025989

22 GCE-FTC-LIT-002-0027992 — GCE-FTC-LIT-002-0028075

23 GCE-FTC-LIT-002-0028076 — GCE-FTC-LIT-002-0028165

24 GCE-FTC-LIT-002-0028166 — GCE-FTC-LIT-002-0028254

25 GCE-FTC-LIT-002-0028255 — GCE-FTC-LIT-002-0028344

26 GCE-FTC-LIT-002-0028345 — GCE-FTC-LIT-002-0028432

1 GCE-FTC-LIT-002-0028433 — GCE-FTC-LIT-002-0028521

2 GCE-FTC-LIT-002-0028522 — GCE-FTC-LIT-002-0028610

3 GCE-FTC-LIT-002-0028611 — GCE-FTC-LIT-002-0028700

4 GCE-FTC-LIT-002-0028701 — GCE-FTC-LIT-002-0028790

5 GCE-FTC-LIT-002-0028791 — GCE-FTC-LIT-002-0028879

6 GCE-FTC-LIT-002-0028880 — GCE-FTC-LIT-002-0028957

7 GCE-FTC-LIT-002-0030792 — GCE-FTC-LIT-002-0030853

8
9 DATED: March 12, 2025

Signing for Objections

10 /S/

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11 Gregory A. Ashe

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16 FEDERAL TRADE COMMISSION

VERIFICATION

As authorized representative of the Federal Trade Commission, I, Sandhya P. Brown, verify that the Answers in the foregoing FTC's Supplemental Response to Defendant Mueller's First Set of Interrogatories are based on a reasonable inquiry and non-privileged information available to the Federal Trade Commission, and are true and correct to the best of my information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this declaration are true and correct.

EXECUTED on this 12 day of March 2025.

/S/

Sandhya P. Brown
Associate Director
Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission